is a potential lien, and gives security for all advances made on the faith of it before receipt of actual notice of a second lien. *Ackerman* v. *Hunsicker*, 85 N. Y. 43. *Cf. Hopkinson* v. *Rolt*, 9 H. L. Cas. 514. If, on the other hand, the mortgagee has bound himself to make advances, he immediately becomes, by the better view, a *bonâ fide* purchaser to the full amount of his contractual liability, and no subsequent incumbrance can affect his rights. *Moroney's Appeal*, 24 Pa. St. 372; *Blackmar* v. *Sharp*, 23 R. I. 412. The English rule, however, accords with that of the principal case. *West* v. *Williams*, [1899] 1 Ch. 132.

MECHANICS' LIENS — WHAT CONSTITUTES MATERIALS FURNISHED. — The plaintiffs furnished lumber to make forms for a concrete building. These forms did not remain in the building permanently, but were made valueless by the use. A statute provides that "a person who performs labor or furnishes materials . . . for the improvement, in any manner, of real estate . . . shall have a lien thereon." *Held*, that the plaintiffs are entitled to a lien. *Avery* v. *Woodruff*, 137 S. W. 1088 (Ky.).

By the better view, a mechanics' lien statute which merely gives a new remedy to enforce a right is to be construed liberally. *Springer Land Association* v. *Ford*, 168 U. S. 513. See BOISOT, MECHANICS' LIENS, §§ 34–36. *Contra*, *Pugh Co.* v. *Wallace*, 198 Ill. 422. But even if it is considered to be in derogation of the common law, in Kentucky the principle of broad interpretation must be applied. RUSSELL, STATS. OF KY., 1909, § 4174. On this view, it has been decided by cases in which dynamite was used in construction, that to come within the words of the statute, physical incorporation into the structure of the materials furnished is not essential. *Giant-Powder Co.* v. *Oregon Pacific Ry. Co.*, 42 Fed. 470. On the other hand, strict construction has led to the decision that oil furnished to a railroad is not within the terms of a similar statute. *Central Trust Co.* v. *Texas & St. Louis Ry. Co.*, 23 Fed. 703. Taking the liberal view, the principal case appears to be closely analogous to the dynamite case, and accordingly a proper interpretation of the statute. To prevent an undue extension of the decision and to reconcile it with authorities, it is suggested that a proper delimitation would be to exclude material, such as scaffolding, which can be used again. *Oppenheimer* v. *Morrell*, 118 Pa. St. 189.

MUNICIPAL CORPORATIONS — LIABILITY FOR TORTS — FAILURE TO ENFORCE ORDINANCES RELATING TO USE OF STREETS. — A city passed an ordinance making it unlawful for vicious dogs to run at large and requiring police officers to kill any such dogs. Through failure of the officers to enforce the ordinance, the plaintiff was bitten. He sues the city on the theory that this was a failure to exercise a corporate rather than a governmental power. *Held*, that he may not recover. *Addington* v. *Town of Littleton*, 115 Pac. 896 (Colo.).

Constructing and maintaining streets in a reasonably safe condition is a corporate duty for the breach of which an action lies at common law. *Denver* v. *Maurer*, 47 Colo. 209. But making and enforcing ordinances regulating the use of streets is an exercise of governmental power, and for failure to enforce such ordinances there is no liability in the absence of statute. The principal case, although near the border-line, seems rightly decided. It represents the weight of authority. *Rogers* v. *City of Binghamton*, 101 N. Y. App. Div. 352, aff. 186 N. Y. 595; *Hull* v. *Roxboro*, 142 N. C. 453. *Contra*, *Taylor* v. *Mayor, etc. of Cumberland*, 64 Md. 68. The doctrine of the minority is criticized in 15 HARV. L. REV. 736.

NEW TRIAL — GROUNDS FOR GRANTING NEW TRIAL — PREJUDICIAL CONDUCT BY TRIAL JUDGE. — At a trial for murder the judge in making rulings did things which, probably negligible if limited to one or two instances, in the aggregate were calculated to create an atmosphere of prejudice against the de-

fendant. *Held*, that the defendant is entitled to a new trial. *People* v. *Kinney*, 202 N. Y. 389.

A trial judge is properly allowed a wide discretion in regard to his conduct during a trial. *People* v. *Smith*, 114 N. Y. App. Div. 513. But a party prejudiced by abuse of this discretion is not without remedy. Thus it is reversible error for the trial judge to make prejudicial remarks as to the argument or conduct of counsel, or as to the character or credibility of a witness. *People* v. *O'Hare*, 124 Mich. 515; *Wilson* v. *Territory of Oklahoma*, 9 Okl. 331; *People* v. *Converse*, 157 Mich. 29. So also is participation by the judge in the examination of witnesses in such a way as to indicate an advocacy of either side. *Adler* v. *United States*, 182 Fed. 464. A succession of prejudicial remarks by the court, no one of which might be sufficient to reverse the judgment, may together constitute reversible error. *State* v. *Coss*, 53 Or. 462. And in general, when the conduct of the judge is such that it may have prevented the trial from being fair and impartial, the granting of a new trial seems proper. *Wheeler* v. *Wallace*, 53 Mich. 355; *Green* v. *State*, 53 So. 415 (Miss.). Under the particular circumstances of the principal case, this result is provided for by statute. N. Y. CODE CR. PROC., § 527.

PLEADING — ONE PERSONAL INJURY CAUSED BY SEVERAL NEGLIGENT ACTS AS MORE THAN ONE CAUSE OF ACTION. — The plaintiff declared on a single personal injury caused by several acts of negligence of the defendant. The defendant demurred on the ground of duplicity. *Held*, that the demurrer should be sustained. *Ferguson* v. *National Shoemakers*, 79 Atl. 469 (Me.).

This case is a logical result of the theory that in an action for negligence the negligent act, and not the damage caused by it, is the cause of action. For a criticism of the theory, see 24 HARV. L. REV. 492.

QUASI-CONTRACTS — RECOVERY FOR BENEFITS CONFERRED WITHOUT CONTRACT — RECOVERY FOR REPAIRS UPON ROADWAY. — The defendants were the successors in title of a canal company which was under a statutory duty to repair a certain road. Upon the defendant's refusal to act, the plaintiffs, the local highway authority, repaired the road and sued for the expenses. *Held*, that the plaintiffs are volunteers and cannot recover. *Macclesfield Corporation* v. *The Great Central Ry.*, [1911] 2 K. B. 528. See NOTES, p. 77.

RAILROADS — LIABILITY TO TRESPASSERS — WHO ARE TRESPASSERS. — Under a working agreement between the defendant and a connecting railroad, the latter used the defendant's tracks. The plaintiff boarded a train of the connecting railroad without right, and was injured in a collision caused by the negligence of the defendant's operatives. *Held*, that he cannot recover. *Grand Trunk Ry. Co. of Canada* v. *Barnett*, 27 T. L. R. 359 (Privy Council, March 28, 1911).

If the plaintiff was a trespasser toward the defendant as well as the other company, he cannot recover, since there was no evidence that the defendant was wantonly reckless. *Grand Trunk Ry. Co.* v. *Flagg*, 156 Fed. 359. His status with respect to the defendant depends largely on the agreement between the companies, which, not being in evidence, the court infers to be a grant of a right of way by the defendant to the other company and all persons lawfully claiming under it. This inference seems reasonable and excludes the plaintiff from any right to be on the premises, rendering him a trespasser and subject to the above rule as to recovery for injuries. Where two railroads use the same right of way, each is liable for its negligence to both the passengers and employees of the other. *Eddy* v. *Letcher*, 57 Fed. 115; *Chicago, etc. Ry. Co.* v. *Martin*, 59 Kan. 437; *Grand Trunk Ry. of Canada* v. *Huard*, 36 Can. Supr. Ct. 655. The principal case rightly limits this rule to cases where the injured party was rightfully on the property.